

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF NEW YORK: TRIAL TERM PART 17

4 - - - - - X
5 REYNA ARROYO,

6 Petitioner,

7 - against -

8 NYC BOARD/DEPT. OF EDUCATION,

9 Respondent.

10 - - - - - X
11 Index No. 100741-2018

12 November 27, 2018
13 60 Centre Street
14 New York, New York 10007

15 B E F O R E: THE HONORABLE SHLOMO S. HAGLER, Justice

16 A P P E A R A N C E S:

17 REYNA ARROYO
18 Petitioner Pro Se
19 651 Tilden Avenue
20 Teaneck, New Jersey 07666

21 NEW YORK CITY LAW DEPARTMENT
22 Office of the Corporation Counsel
23 100 Church Street
24 New York, New York 10007-2601
25 BY: ALANA R. MILDNER, ESQ.

26 ALSO PRESENT: Mariella Torres,
Official Spanish Interpreter

27 Terry-Ann Volberg, CSR, CRR
28 Official Court Reporter

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2 THE COURT: Good morning. Welcome. I am
3 Judge Hagler.

4 I believe we have a Spanish interpreter here.

5 THE INTERPRETER: Yes.

6 THE COURT: Please state your name.

7 THE INTERPRETER: Mariella Torres, Court
8 Interpreter, Spanish.

THE INTERPRETER: You're welcome.

12 THE COURT: Your name, please.

13 MS. R. ARROYO: Reyna Arroyo.

14 THE COURT: Ms. Arroyo, are you ready to
15 proceed today?

16 MS. R. ARROYO: Yes, sir, I am ready.

17 THE COURT: Counsel, please state your name.

18 MS. MILDNER: Alana Mildner, New York City
19 Law Department.

20 THE COURT: Are you ready to proceed today?

21 MS. MILDNER: Yes, your Honor.

22 THE COURT: I have read the papers. This is
23 an Article 75 proceeding wherein Ms. Arroyo --

24 THE INTERPRETER: I am sorry, sir, I lost
25 track.

26 THE COURT: This is an Article 75 proceeding

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2 wherein Ms. Arroyo is seeking to vacate the
3 determination by the arbitrator. The arbitrator found
4 the specifications by the respondent to be mainly
5 sustained. The penalty unfortunately for Ms. Arroyo
6 was termination.

7 Ms. Arroyo is challenging both the
8 determination in the specifications, the findings of
9 fact with regard to the specifications, and, more
10 importantly, the penalty which was termination.

11 I have received --

12 THE INTERPRETER: I'm having a hard time
13 hearing you.

14 THE COURT: I will speak louder.

15 I have received the papers in this case, and
16 now we are ready to proceed.

17 Ms. Arroyo, do you want to tell me why I
18 should vacate the arbitrator's determination both as to
19 the findings and the penalty?

20 Whenever you are ready, Ms. Arroyo.

21 MS. R. ARROYO: I have here an oral argument
22 which I would like to read. If you will allow me to, I
23 have my friend and my son. Perhaps one of them could
24 read this.

25 THE COURT: She wants her son to read it?

26 THE INTERPRETER: Yes, or her friend, in the

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2 back.

3 THE COURT: I prefer that Ms. Arroyo speak
4 for herself, I think.

5 THE INTERPRETER: It's written in English.

6 The document she's holding is written in English.

9 MS. R. ARROYO: Okay. I may read it.

10 THE COURT: I will allow you some leeway.

11 Normally I don't allow prepared written speeches, but
12 since you are not represented by counsel, I will give
13 you a little leeway.

20 I want you to really highlight some of your
21 main arguments and persuade me why I should vacate the
22 arbitrator's determination. If you want to read, I
23 will allow you to read because, as I said earlier, I
24 will give you a lot of leeway because you are not
25 represented by counsel. This is important, an
26 important decision for you, and I will accommodate you

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2 as much as I can.

3 MS. R. ARROYO: So then I shouldn't read it,
4 right?5 THE COURT: Sorry? I didn't say that. What
6 I said was, I prefer if you highlight the major points.
7 If you would like to read, I will accommodate that. I
8 am giving you a choice. I am not restricting you.9 I want you to have your opportunity here in
10 court, it's going to be one time, and I want you to
11 make the most of that one time.12 MS. R. ARROYO: Okay. I am going to read
13 it.14 Thank you, your Honor, for this opportunity
15 to address the unjust penalty handed down at my 3020-a
16 by Arbitrator Lisa Pollack.17 The basis of the petition is essentially
18 three arguments. The first is a procedural argument
19 that the New York City Department of Education --20 THE COURT: You have to say it slower and
21 you have to pronounce it a little better. I understand
22 what you are saying, but I don't have to type it.23 MS. R. ARROYO: New York City Department of
24 Education circumvented and skirted procedural
25 safeguards that are in place before a teacher is given
26 any penalty.

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Second is the apparent --

THE COURT: You are doing it again.

MS. R. ARROYO: -- is the apparent improper

motivations of the Department inferred from --

THE INTERPRETER: Inferred.

THE COURT: Let's stop for a second.

Ms. Arroyo, what you are saying is

9 incomprehensible. I can't understand you. You are
10 saying very big words that you are having difficulty
11 enunciating, and it's actually blurring your arguments.
12 The reporter can't take it down. I can't understand it
13 as well. I understand the first argument, but the
14 second one, I didn't hear a word you said.

15 I normally don't do this. If you want your
16 son to read it, I will allow your son to read it if you
17 want to give me the highlights, but we are not making
18 progress this way because I don't understand it.

Counsel.

20 MS. MILDNER: Your Honor, I would ask that
21 somebody else read it, the interpreter, perhaps, or
22 that Ms. Arroyo submit it.

23 THE COURT: Do you want the interpreter to
24 read it? How is that? Would you like to do that?

THE INTERPRETER: Okay.

26 THE COURT: This is not a bad idea.

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THE INTERPRETER: Second is the apparent
improper motivations of the Department inferred from
inconsistencies, implausibilities, and contradictions
in the record.

Third is objective data which shows that I am actually an effective teacher.

The procedural errors are rampant in this case starting with the violation of Education Law 3020-a(2)(a) with the omission of an Executive Session and vote on probable cause by the Panel For Educational Policy. Arbitrator Pollack was appointed to hear this case pursuant to ED Law 3020-a, but the Department never brought my charges to an Executive Session for a vote on probable cause.

The Department insists that the Department gave the Chancellor all the duties of the school board. Okay, then the Chancellor should have held an Executive Session and vote on Probable Cause as mandated by the law.

She, Former Chancellor Carmen Farina, never did this. Thus, Arbitrator Pollack had no subject-matter jurisdiction to make any decision in my case.

Judge Desmond Green ruled in the Article 75
Petition brought by Rosalie Cardinale in Richmond

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2 County Supreme Court, Index Number 85165/2017 on
3 March 9, 2018, that "The Court of Appeals speaking on
4 the necessity of teachers tenure stated: Tenure is a
5 legislative expression of a firm public policy
6 determination that the interests of the public in the
7 education of our youth can best be served by a system
8 designed to foster academic freedom in our schools and
9 to protect competent teachers from the abuses they
10 might be subjected to if they could be dismissed at the
11 whim of their supervisors. In order to effectuate
12 these convergent purposes, it is necessary to construe
13 the tenure system broadly in favor of the teacher, and
14 to strictly police procedures which might result in the
15 corruption of that system by the manipulation of the
16 requirements for tenure." Ricca v. Board of Education,
17 47 NY2d 385, 391 (1979).

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evidence permitting such delegations, runs afoul of the clear legislative intent. The concentration of all disciplinary authority into the hands of a single local administrator creates the very 'arbitrator imposition of formal decision' the legislature sought to prevent when enacted Education Law 3020-a. (Holt v. Board of Ed of Webutuck Central School Dist., 52 NY2d 625, 632, [1981]. (Decision, p. 11-12)

Judge Green then granted Ms. Cardinale's Verified Petition and vacated her termination. I submitted the exact same Motion to Dismiss For Lack of Subject-Matter Jurisdiction in my hearing, your Honor, and, therefore, I ask you to do the same.

It is clear from the record that the circumstances and facts presented in this matter did not deserve any kind of penalty. Arbitrator Lisa Pollack, Esq. was far from neutral in the 3020-a arbitration. She neglected to address the fact that my prior record of teaching for 19 years was exemplary, and I had never been disciplined before.

Her decision to terminate my employment is based solely on the nonfinal opinions of the Principal and Assistant Principal in and observations. What is competency? To Arbitrator Pollack, who willingly and recklessly refused to honor my tenured status,

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2 incompetency is anything that the principal said it
3 was. She terminated me on hearsay alone which is not
4 permitted in these proceedings.

5 The Department did not bring in any grades of
6 students or outcomes of student performance. Thus,
7 there is no evidence that I could not teach my
8 students. In fact, my student witnesses testified that
9 I made a very big impact on their learning. Pollack
10 was not interested. She was predisposed to terminate
11 me from the first day of hearings. I had no voice.

12 Danielson mandates that an observation is a
13 minimum of 15 minutes. What can an administrator see
14 in 15 minutes of a lesson? Very little. As I wrote in
15 my Verified Petition, observation reports are only
16 opinions. There are no facts or data in observation
17 reports. This was the ruling in the Kings County case
18 called Elentuck v. Green cited in my petition.

19 Arbitrator Pollack ignored the mandates for
20 "just cause, strict scrutiny as a standard of review,
21 and progressive discipline," and she also showed no
22 concern that the Department did not reach the high
23 standard for a preponderance of the evidence in this
24 matter.

25 One more point I would like to make here
26 today. I was charged with 11 observations. Assuming

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each observation lasted 20 minutes as an average, over the three charged years I was assessed for 120 minutes by the administrators who wanted to terminate my job, but three years of teaching is more than 222,000 minutes. Therefore, your Honor, Arbitrator Pollack terminated my employment because of the hearsay, nonfinal opinions from 120 minutes. Does this make sense? No, it does not.

Arbitrator Pollack used only the biased opinions and hearsay statements of the administrators over the straightforward factual information given in testimony by me and my witnesses. This is unconscionable and cause to vacate the baseless penalty in favor of a less extreme penalty or none at all.

Thank you, your Honor.

THE COURT: Okay. Thank you.

Ms. Arroyo also handed me a written version of the oral argument which I read. I listened to it. I believe counsel received a copy as well, correct?

MS. MILDNER: Yes, your Honor.

THE COURT: Ms. Arroyo, have you concluded your argument?

MS. R. ARROYO: I said everything here.

THE COURT: Okay.

Counsel, opposition, please.

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2 MS. MILDNER: Your Honor, Ms. Arroyo has not
3 shown that Education Law 3020-a was violated in any way
4 at her hearing.

11 MS. MILDNER: I believe it was Exhibits 5
12 and 6 to respondent's answer which contained two
13 delegation memoranda. One of those memorandum was
14 delegating authority from the Chancellor to the
15 Community School Superintendent, Ms. Nunez, the other
16 memorandum --

17 THE INTERPRETER: I can't keep up with here.

18 THE COURT: You really have to slow down a
19 little.

20 THE INTERPRETER: Can I have the last portion
21 read back?

22 THE COURT: Please.

23 (The testimony as requested was
24 read by the reporter.)

25 MS. MILDNER: -- was delegating authority
26 from the Community Superintendent to principals. So

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2 here Principal Timothy Sigerson did have the authority
3 to bring charges.

4 Addressing any arguments regarding any sort
5 of improper motivation, petitioner has not demonstrated
6 that there was any individual who was out to get
7 petitioner. There were five administrators who
8 testified at the hearing, two principals, two assistant
9 principals, and a field supervisor from the ATR
10 Reserve, and all of them testified consistently
11 regarding Ms. Arroyo's classroom performance.

12 Although Ms. Arroyo states that Arbitrator
13 Pollack wanted to terminate petitioner from the first
14 day of the hearing, there is nothing in the record to
15 indicate any bias on the part of Arbitrator Pollack nor
16 has petitioner pointed to anything that would show that
17 Hearing Officer Pollack administered the hearing in any
18 way other than a fair way.

19 Then regarding petitioner's third point,
20 under the evaluation system that the Department of
21 Education uses, informal observations can be a minimum
22 of 15 minutes, and depending on the option that a
23 teacher chooses, teachers are observed six times per
24 year. So there is nothing that was done in observing
25 Ms. Arroyo that was against state law or the procedures
26 of the Department of Education.

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Moreover, the penalty does not shock the conscience. Ms. Arroyo engaged in a pattern of ineffective instruction over the course of three school years. Additionally, upon being provided with professional development opportunity, Ms. Arroyo's teaching failed to improve to the level that would be necessary for her to be an effective chemistry teacher. Therefore, the penalty of termination is appropriate.

I have nothing else, your Honor, unless the Court has questions.

THE COURT: Ms. Arroyo, do you want to say anything else as the last word? You get reply. Do you want to say anything else in reply?

MS. R. ARROYO: Yes.

The three years of teaching that I had, it was the same person who observed me 15 minutes. That person would go in, would go out. She didn't know what happened before, what took place after those 15 minutes, the results of my students. At the end of the year my students' end results were good including that they passed the regents exams. That means that somebody was teaching because regents -- I did not grade the regents, somebody else graded the regents.

THE COURT: Have you completed your presentation?

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MS. R. ARROYO: Yes.

THE COURT: Thank you.

Stay here, please. The parties have been waiting for a decision on this matter. I am going to render a decision now.

Let's set forth the standard by which the Court decides these type of cases. This is a proceeding brought under Article 75 of the CPLR. There are narrow grounds to vacating an arbitrator's award.

Since the arbitration was mandatory, it also implicates due process requirements under Article 78 of the CPLR which provides a secondary layer of protection in that the award cannot be arbitrary or capricious or irrational under the circumstances. The Court must take into consideration the penalty by viewing it as whether it is shocking to the conscience.

Petitioner essentially has three arguments. The first one is a procedural argument. Essentially petitioner argues as she did before the arbitrator --

THE INTERPRETER: That she?

THE COURT: The petitioner argues as she did before the arbitrator that the principal did not have authority to propound charges, specifications under Education Law 3020-a. The arbitrator denied it indicating that Educational Law Section 2590-h provided

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for delegation by the Chancellor to the district superintendent who then delegated authority to the local school principals. In the record counsel indicated such delegation memoranda was presented to both the arbitrator as well as this Court that provides for the requisite delegation of duties and responsibilities from the Chancellor, to the superintendents, to the local school principal.

I have read the decision and order of Justice
Desmond Green from Supreme Court County of Richmond
which was dated March 29, 2018. Justice Green, for
one, did not indicate in the decision whether or not
the requisite memorandum was attached to the petition
or actually the answer to the petition which would
satisfy Educational Law requisites. Moreover, there's
been countless decisions within the First Department, I
am not familiar with decisions of the Second
Department, that are contrary to the determination --

THE INTERPRETER: That are what, sir?

21 THE COURT: -- that are contrary to the
22 determination of Justice Green sitting in the Second
23 Department in Richmond County. My recollection is that
24 I believe there's at least one Appellate Division
25 decision that has reviewed that issue in the First
26 Department. It was one of my decisions that was

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affirmed wherein I ruled that there can be delegation of authority from the Chancellor to the superintendent directly to the local school principals. I can't remember the name of the decision. They affirmed my decision. There are many of my colleagues here in New York County that have ruled in that manner. That issue is no longer a disputed issue. When I first started doing these Article 75s about four or five years ago there were really no decisions on point. Now there have been a multitude of decisions all concurring that such duties and responsibilities can be delegated by the Chancellor.

14 Let's move on to the second argument of Ms.
15 Arroyo. Essentially the second argument challenges the
16 findings of the arbitrator. The arbitrator in a
17 lengthy decision reviewed the witnesses credibility of
18 both petitioner's witnesses of which there were many, I
19 believe six or seven, and five witnesses from the
20 respondent. The arbitrator reviewed and discussed each
21 of the respective witnesses, and found that
22 petitioner's witnesses were testifying truthfully, but
23 really had no ability to gauge the competency of Ms.
24 Arroyo's pedagogy. In contrast, the arbitrator found
25 that the respondent's witnesses were properly trained,
26 did not exhibit or evince any bias towards Ms. Arroyo,

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citing an example wherein others that were similarly situated were found to be effective and competent teachers.

The case law is very clear that this Court, even if it wished to do so, cannot substitute its judgment, and review and change credibility findings of an arbitrator.

Ms. Arroyo in her petition directly challenges the arbitrator's ability to be impartial, and states that the arbitrator had bias towards her. The standard to show bias is a very high one. The petitioner fails to do so presenting no evidence of bias other than --

THE INTERPRETER: I would need the last portion read.

THE COURT: Read it back.

(The testimony as requested was
read by the reporter.)

THE COURT: -- other than a determination that terminates her employment. The very arbitration decision which is negative and does not support your position is insufficient alone to demonstrate bias. In other words, the mere fact that the arbitrator ruled against you does not give rise to an allegation of bias.

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I just want to review the specifications, the charges against Ms. Arroyo. They reflect three different years, 2014 to '15, 2015 to 2016, 2016 to 2017. They span a period of November 12, 2014, 2015, 2016, and last, May 22nd, 2017.

There are 11 dates wherein the respondent had charged the petitioner with failing to properly, adequately, and effectively plan and execute lessons on those dates. We are not talking about one isolated incident, we are not talking about two, we are not talking about one year or even two years, we are talking about three years of observations spread over 11 different dates, and three years of teaching that was reviewed and observed.

That brings me to the third point of Ms. Arroyo, that one cannot properly judge an individual with 15 minutes of observations. This is hardly 15 minutes. This is a three year span of time. Therefore, this Court cannot, even if it wished, change the factual determinations by the arbitrator, and the credibility findings as to the level of competence during that lengthy period of time.

Let's move on to the real issue. The petitioner strenuously argues that the penalty shocks the conscience and should be vacated.

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I just want to read a portion of the arbitration award by the arbitrator with regard to the penalty. I'm going to read the paragraph just above penalty because it gives background. "Having found that the Department has proven respondent's incompetency, I must now look at remediation efforts. As set forth above, the evidence introduced documented professional development meetings, training, action plans, some coaching offers, and feedback and suggestions from numerous formal and informal observation. As of 2016 through 2017, respondent had not improved in any appreciable way. All of these admonitions and opportunities were designed to improve respondent's teaching performance. The respondent's own testimony clearly established that she knew and understood that the department was concerned with her pedagogy, and that they wanted her to follow their suggestions to better her pedagogy. It is also clear that respondent was aware of the consequences if she did not improve her pedagogy."

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I'm going to skip to the last line, sorry,
the last paragraph on page 46. "However, I have
reviewed the observations and find the same pedagogical
weaknesses again and again. I find that the respondent
adamantly resisted any suggestion that her practice
needed improvement. I find that the department made
significant efforts to provide respondent with
opportunities for professional development, and I find
the respondent consistently and adamantly resisted
those efforts.

17 I believe on the evidence before me that
18 there is no prospect that respondent could improve her
19 performance to an effective level if she is offered
20 further remediation. She has not improved over three
21 years despite being under a TIP all three years. Her
22 testimony showed that she does not believe that there
23 is any problem to her pedagogy, and there is no
24 indication that she will follow instructions under the
25 past TIPs.

26 If she were going to change, she would have

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done so when she was put on notice that she was vulnerable when she received TIP, and she would have engaged in substantive discussions with administrators in post-observation conferences. She would have submitted lesson plans for review with the administrators which she did not.

Termination is not a disproportionate penalty when measured against the seriousness and harm to the children. I do not believe that a fine or suspension would change her. Accordingly, I determine that the proper penalty in this case is termination.

The arbitrator considered the specifications, the observations, the opportunity and warning that petitioner had to improve her pedagogy. She was given three year's worth of developmental training. The petitioner, according to the arbitrator, did not improve in any appreciable manner. Moreover, the arbitrator found that remediation, further training, would not be successful as the petitioner believes adamantly that she needs no further improvement in her pedagogy.

The arbitrator found that the past performance showed that she will not remediate and had not made any effort to do so not even providing lesson plans for the administrators to review.

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Given that petitioner had ample opportunity for improvement over the course of three years, that petitioner has not improved in any appreciable manner, and that remediation would not be effective given her adamant rejection that she needs improvement in the areas of pedagogy, the arbitrator's determination and penalty of termination does not shock one's conscience, and was reasonable and rational under the circumstances. Therefore, this Court denies the petition and dismisses the proceeding.

Have a good day.

Good luck in the future.

MS. MILDNER: Thank you, your Honor.

* * *

C E R T I F I C A T E

17 I, Terry-Ann Volberg, C.S.R., an official court reporter of
18 the State of New York, do hereby certify that the foregoing
19 is a true and accurate transcript of my stenographic notes.

Terry-Ann Volberg
Terry-Ann Volberg, CSR, CRR
Official Court Reporter